THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

Writ Petition No.304 of 2001

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ORDER: (per the Hon'ble Sri Justice T.Ch.Surya Rao)

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The petitioner seeks a writ of *Certiorari* to quash the order, dated 16-11-2000, passed by the learned Special Court and the order dated 13-06-1997 passed by the learned Special Tribunal in L.G.A.No.30 of 1997 and L.G.O.P.No.5 of 1990 respectively after calling for the records pertaining thereto, on the premise that the orders have been passed without jurisdiction.

The unsuccessful respondent is the writ petitioner and the second respondent herein is the applicant.

The facts lie in a narrow compass: The applicant filed L.G.O.P.No.5 of 1990 on the file of the Chairman, Special Tribunal under the A.P. Land Grabbing (Prohibition) Act-cum-District Judge, Adilabad, against the respondent under Section 7-A of the said Act. That application was filed on the premise that the applicant purchased the house bearing No.4-3-65 along with the appurtenant land under a registered sale deed dated 05-02-1969 and she was the owner thereof and that the respondent forcibly occupied the house and since then he had been in illegal and unauthorized possession of the said house and open land and therefore the respondent was a land grabber.

That application was resisted by the respondent. His case was that the original owner of the entire house along with the appurtenant open land was one, Mohammed Hussain and the said Mohammed Hussain orally gifted the northern portion of the house to his younger son, Mohammed Jaffar Hussain and southern portion of the house with

its appurtenant open land to his elder son Shoukath Hussain, in the year 1954, in the presence of Mohammed Ahmed, Abdul Quddus, Shaik Fareed, Wahedullah Khan, Noor Mohammed Khan, Shaik Mehaboob and Abdul Rasheed, besides the donees and their family members and that he is the son of Shoukath Hussain. Jaffar Hussain, was missing since the year 1959 and under law he was deemed to have died since his whereabouts were not known and that Mohammed Hussain gifted the house and the open land to Shoukath Hussain having regard to the fact that he had number of children and his family was big. Late Mohammed Hussain became mentally unsound from the year 1956 and he never executed any sale deed in favour of the applicant and the sale deed dated 05-02-1969 was a fabricated document and that he was not a grabber.

At the culmination of enquiry, appreciating the evidence adduced on either side, both oral and documentary, the learned Special Tribunal was of the view that late Mohammed Hussain was in sound state of mind till his death and he executed the sale deed, dated 05-02-1969, in favour of the applicant and therefore she was the owner of the disputed property. It was further held that late Mohammed Hussain could not have executed any gift in favour of Jaffar Hussain and Shoukath Hussain. Eventually, it concluded that the respondent was a land grabber. Aggrieved by the said judgment, dated 13-06-1997, passed in L.G.O.P.No.5 of 1990 the respondent carried the matter in appeal in L.G.A.No.30 of 1997 to the Special Court. By means of an order dated 30th October, 1998 the learned Special Court allowed the appeal and directed to return the application in L.G.O.P.No.5 of 1990 for presentation to a proper Court on the premise that Special Tribunal had no jurisdiction to entertain a petition in respect of the house property. Assailing the said order of the Special Court, the petitioner filed the Writ Petition No.35561 of 1998. A bench of this Court allowed the Writ Petition holding that the view of the Special Court was not correct and consequently set aside the order of

the Special Court and remitted the matter to the Special Court for fresh hearing on merits. It is after that remand under the impugned judgment the learned Special Court after considering the evidence on record, dismissed the appeal and thereby confirmed the order of the Special Tribunal. The respondent is now assailing the said judgment in the instant writ petition.

Sri Ramakrishna Reddy K, learned senior counsel appearing for the writ petitioner raises mainly the jurisdictional question. According to the learned counsel since the application before the Special Tribunal was filed in respect of a house property with its appurtenant vacant land the Special Tribunal under the A.P. Land Grabbing (Prohibition) Act has no jurisdiction to deal with the house property and therefore the impugned orders are without jurisdiction. It is his further contention that the remand order passed by this Court being in the nature of an interlocutory order and having been passed without considering the relevant provision under the Land Grabbing (Prohibition) Act is without jurisdiction and is a nullity and will not operate as a bar.

Per contra, Sri Ravinder Rao V, learned counsel appearing for the second respondent, represents that the remand order, passed by this Court earlier, having not been challenged, has become final and that will operate as *res judicata*. The learned counsel would further represent that every building is covered in the definition of 'land' and having regard to the fact that the extent of the open land is more than the extent covered by the building, the dominant one being the open land, it shall be construed accordingly.

The points that are germane for determination in this Writ Petition are:

(1) Whether the property in question is a building or land? and

(2) Whether the Special Tribunal has jurisdiction to entertain an application in respect of a house property with its appurtenant open land or not?

The propinquity of relationship in between the parties *inter se* is not in dispute. The property in dispute was originally belonged to late Mohammed Hussain having purchased the same under Ex.A9 sale deed dated 30th January 1946. Admittedly, he was in Government service and retired from the service due to superannuation. While it is the case of the petitioner that late Mohammed Hussain executed a registered sale deed dated 05-02-1969 while in sound state of mind; it is the case of the respondent that late Mohammed Hussain became mentally unsound from the year 1956 onwards and was suffering from mental disorder till his death and that earlier thereto in the year 1954 he gifted the northern portion of the house to his younger son Mohammed Jaffar Hussain and southern portion of the house along with the open land to his elder son, Shoukath Hussain and the gift was oral. The sale deed dated 05-02-1969, under which the applicant is said to have purchased the property in dispute, has been seriously assailed by the respondent as a fabricated document.

Having regard to the competing claims, appreciating the evidence, both oral and documentary, adduced on either side, the learned Special Tribunal held that the applicant was the owner of the disputed property. In reaching the said conclusion, the learned Judge considered Ex.A1, registered sale deed and the oral testimony of P.Ws.3 and 5 to 7, who identified the signature of late Mohammed Hussain in Ex.A1 and thereby proved the due execution thereof, besides Ex.A2 mutation proceedings, Exs.A4 and A5 tax receipts, Ex.A8 notice got issued by late Mohammed Hussain to the petitioner and Ex.A10 office copy of the application given to the municipality for effecting mutation. The learned Special Tribunal also reached the conclusion that late Mohammed Hussain was in sound state of mind till his death and in reaching the said conclusion it sought to rely upon besides the oral testimony of P.Ws.3 and 5 to 7, the documentary evidence in EXs.A10, A12, A13 and more particularly, Ex.A14, paper publication got issued by late Mohammed Hussain disowning his son,

i.e., the husband of the petitioner. P.W.5 is no other than the own daughter of late Mohammed Hussain. P.W.6 is a practicing Advocate, who had been appointed as an Advocate Commissioner and who recorded the statement of late Mohammed Hussain. P.W.7 is the grand son of late Mohammed Hussain. Thus, the conclusions reached by the learned Special Tribunal have been well founded upon the oral and documentary evidence, as discussed hereinabove. The learned Special Court too on reappraisal of the evidence concurred with the conclusions thus reached by the Special Tribunal. Therefore, there have been concurrent findings of the Special Tribunal and the Special Court as well on the contentious issues in between the parties.

The identity of the property is not in dispute. Nonetheless, the description of the property needs to be considered as it is crucial for determining the jurisdictional issue raised by the learned senior counsel on behalf of the respondent. In the application filed before the Special Tribunal *inter alia* qua the columns 9, 10 and 11, the particulars regarding the classification of land, survey number and sub-division number and extent, have been given as under:

"9. Classification of Land	: House bearing Municipal Nos.4-3-65, 2-5-256 (old) and open land.
10. Survey No. and Sub-Division No.	: House No.4-3-65, 2-5-256 (old) and open land comprising of 9341 square feet
11. Extent	: Open land 9341 square feet Plinth area of the house: 1114 square feet."

What is more germane is the concise statement given qua the column 14 of the application, which pertains to the summary of the claim made and the provision of law under which it is preferred. It has been averred in the said column as under:

"The house and appurtenant land i.e., house bearing No.4-3-65 corresponding to old number 2-5-256 belongs to the petitioner. The petitioner purchased the said house under a registered sale deed dated 05-02-1969.

The respondent forcibly occupied the house and since then he is in the occupation of the said house and open land. The registered sale deed was attested by the following two witnesses:-

1. Syed Afzal, S/o Syed Shabbir Hussain, R/o Adilabad.
2. Late Shaik Ahmed, S/o Shaik Abdullah, R/o Adilabad.

Late Ameerullah Khan was the scribe to the document."

Vis-a-vis column 17 meant to state any other particulars, it has been mentioned that the petitioner is entitled to possession of the house and appurtenant land as the respondent is a land grabber within the definition of Section 2 (c) of the Act.

Thus, from the above excerpts it is obvious that the property in dispute is the house bearing Municipal No.4-3-65 with its appurtenant open land. The applicant claims to have purchased the said property by means of a registered sale deed dated 05-02-1969 and the respondent allegedly occupied the house forcibly and since then he has been in possession of the said house and open land. Even according to the plea of the respondent the northern portion of the house was given to the applicant's husband under an oral gift and the southern portion of the house along with its open land was given to him under an oral gift.

Whether the property in dispute is a land or building is not a contentious issue between the parties *inter se*. Indeed, neither it has been raised nor answered by the Tribunal or the Special Court, as the case may be. For determination of such an issue, no evidence need be adduced and the controversy, if any, can better be resolved by looking at the pleadings. From the pleadings, it is obvious that the question as to whether the property in dispute is a building with its appurtenant site or a land on which the building exists, is not contentious. On the other hand, the parties visibly seem to have proceeded on the assumption that the property in dispute as the "building with its appurtenant site" and understood the property in dispute as "building with its appurtenant site". In that view of the matter, the contention of the learned counsel for the respondent that the extent of vacant land being

9341 square feet whereas the plinth area of the building was only 1114 square feet, the dominant one being the open land but not the building therefore the property in question is a land along with the building thereon cannot be countenanced. From the respective claims of the parties it is obvious that the property in dispute is a house with its appurtenant site.

Obviously, the point of jurisdiction has not been raised *inter alia* in the counter filed by the respondent before the Special Tribunal. However, the learned Special Court adjudicated the same and initially earlier to the remand order of this Court was of the clear view that the application which had been filed in respect of a house property which had been alleged to have been grabbed by the respondent was not maintainable before the Special Tribunal. This conclusion of the Special Court was set aside by a co-equal bench of this Court in W.P.No.35561 of 1998 by its order dated 04-07-2000. This Court in its remand order did not express any opinion on the merits of the case, but the writ petition was disposed of on the short ground of maintainability of the application. Having regard to the definition given in Section 2(c) of the Act this Court was of the clear view that in addition to the above definition enjoined under Section 2 (c) of the Act the word 'land', as defined in other statutes and as decided by this Court and the Apex Court as well, included superstructure, building etc., unless they were excluded from the definition of the 'land' by the Special Act. Having been of the said view this Court while setting aside the order passed by the Special Court remitted the matter to the Special Court for fresh disposal after considering the merits of the case.

Sri K.Ramakrishna Reddy, learned senior counsel for the petitioner, represents that the judgment of this Court in W.P. No.35561 of 1998, being in the nature of an interlocutory order, will not operate as *res judicata* and the judgment is *non est* having been rendered without jurisdiction and without considering the relevant provisions of

the Act and the specific pleas taken by the parties *inter alia* in their respective pleadings and such a judgment is not binding upon the parties nor upon this Court. To buttress the said contentions, the learned counsel seeks to place reliance upon a judgment of the Apex Court in *Madanraj v. Jalamchand Lodha and another*[1]. A three judge bench of the Apex Court held thus:

> "In its very nature the order of remand passed by the High Court does not finally decide the points in the case and it is essentially of an Interlocutory character."

In *Satyadhyan v. Smt.Deorajin Debi*[2] a three judge bench of the Apex Court in para 22 held thus:

> "In our opinion the order of remand was an interlocutory order which did not terminate the proceedings and so the correctness thereof can be challenged in an appeal from the final order. We hold therefore that the appellant is not precluded from raising before us the question that S. 28 of the original Thika Tenancy Act was not available to the tenants after the Thika Tenancy Amendment Act came into force."

The eventual judgment of the Apex Court clearly shows that the finding reached by the Court while remitting the matter although has not been assailed by filing an appeal but when the matter reached the appellate Court as against the final decision after such remand the correctness of the remand order could be considered. That seems to be the clear authoritative pronouncement of the Apex Court in the said judgment. It is obvious from the above two judgments of the Apex Court that an order of remand is in the nature of an interlocutory order.

The legal position sought to be canvassed has not been disputed by the learned counsel for the second respondent presumably so having regard to his contention that even the interlocutory orders allowed to become final would operate as *res judicata.* In support of the said contention Sri Ravinder Rao, learned counsel seeks to place reliance upon the judgments of the Apex Court in *Perumal v. Ponnuswami*[3], *Y.B.Patil v. Y.L.Patil*[4]; and

Satyadhyan's case referred to above.

In *Satyadhyan's case* in para 8 the Apex Court held thus:

"The principle of *res judicata* applies also as between two stages in the same litigation to the extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings. Does this however mean that because at an earlier stage of the litigation a court has decided an interlocutory matter in one way and no appeal lie, a higher court cannot at a later stage of the same litigation consider the matter again?"

As per the matrix of that case the appellants, who are the landlords of the building, obtained a decree for ejectment against the tenants, the respondents, on 10-02-1949. On 03-03-1949, the respondents filed an application under Order 9 Rule 13 of the Code of Civil Procedure seeking to set aside the *ex parte* decree. That application was dismissed on July 16, 1949. On 09-09-1949, after the advent of the Calcutta Thika Tenancy Act, 1949, the respondents filed an application under Section 28 thereof requesting to rescind the decree passed in the month of February 1949. That application was eventually dismissed by the learned Munsif holding that the applicants were not Thika tenants. That was assailed before the High Court of Calcutta in revision. During the pendency of the revision, the Calcutta Thika Tenancy Ordinance had come into force seeking to amend the Calcutta Thika Tenancy Act. Under the amended provisions of Calcutta Thika Tenancy Act, the provisions of the Act shall apply and be deemed to have always applied to the pending proceedings. In view of the same, the High Court allowed the revision and remanded the case to the Court of Munsif for fresh disposal. After such remand, the Munsif rescinded the decree and the revision filed by the landlords assailing the said order, ended in dismissal before the High Court. In the revision before the High Court it was sought to be contended by the learned counsel for the landlords about the applicability of Section 28. That contention was repelled on the ground that such a contention was barred by *res judicata*. The contextual matrix under which the

decision came to be rendered obviously seem to be altogether different than the facts in the instant case.

Yet another three judge bench of the Apex Court in *Mathura Prasad v. Dossibai* [5] held thus:

> "A question relating to jurisdiction of a Court cannot be deemed to have been finally determined by an erroneous decision of that Court. If by an erroneous interpretation of the statute the Court holds that it has not jurisdiction, the question would not operate as *res judicata*. Similarly by an erroneous decision if the Court assumes jurisdiction which it does not possess under the statute, the question cannot operate as *res judicata* between the same parties, whether the cause of action in the subsequent litigation is the same or otherwise, because, if those decisions are considered as conclusive, it will assume the status of a special rule of law applicable to the parties relating to the jurisdiction of the Court in derogation of the rule declared by the legislature."

That was a case where the respondent had given on lease 555 square yards of land to the appellant, for constructing buildings for residential or business purpose. The appellant accordingly constructed buildings on that land. The appellant then submitted an application in the Court of the Junior Civil Judge requesting to fix the standard rent under Section 11 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The Court rejected the application holding that the provisions of the said Act did not apply to open land let for constructing buildings for residence, education, business, trade or storage. That order was confirmed by the High Court of Bombay. But in a later judgment the Bombay High Court held that the question whether Section 6 (1) of the Act applies to any particular lease must be determined on the terms of the lease and the lease in respect of an open plot is not excluded from Section 6 (1) of the Act solely because open land may be used for residence or educational purposes only after the structure is built thereon. Relying upon the said judgment the appellant filed a fresh petition requesting to fix the standard rent. The trial Judge rejected the application holding that the earlier decision in respect of the same parties would

operate as *res judicata*. That order was eventually confirmed by the Bombay High Court. In the appeal before the Apex Court it was held as stated supra. The law in this case has been succinctly considered by the Apex Court. In para 5 the Apex Court held thus:

"The previous decision on a matter in issue alone is *res judicata*: the reasons for the decision are not *res judicata*. A matter in issue between the parties is the right claimed by one party and denied by the other, and the claim of right from its very nature depends upon proof of facts and application of the relevant law thereto. A pure question of law unrelated to facts which give rise to a right, cannot be deemed to be a matter in issue.....A decision on an issue of law will be as *res judicata* in a subsequent proceeding between the same parties, if the cause of action of the subsequent proceeding be the same as in the previous proceeding, but not when the cause of action is different nor when the law has since the earlier decision been altered by a competent authority, nor when the decision relates to the jurisdiction of the Court to try the earlier proceeding, nor when the earlier decision declares valid a transaction which is prohibited by law."

The Apex Court quoted with approval the judgment of the Calcutta High Court in *Tarini Charan Bhattacharjee v. Kedar Nath Haldar*[6], which enunciated the law succinctly while categorizing the questions of law thus:

"Questions of law are of all kinds and cannot be dealt with as though they were all the same. Questions of procedure, questions affecting jurisdiction, questions of limitation may all be questions of law. In such questions the rights of parties are not the only matter for consideration."

The Court further held thus:

"A question of jurisdiction of the Court, or of procedure, or a pure question of law unrelated to the right of the parties to a previous suit, is not res judicata in the subsequent suit."

It is obvious from the above that a decision in respect of a matter in issue between the parties; whether it is a question of fact or question of law; will operate as *res judicata* in between the same parties in a subsequent proceeding, provided the cause of action in the subsequent proceeding is the same as in the previous proceeding. Even if the cause of action is different a decision on a question of law will not operate as *res judicata.*

In *Y.B.Patil v. Y.L. Patil*[7] the Apex Court no doubt held that the

principles of *res judicata* can be invoked not only in separate subsequent proceedings, but also in subsequent stage of the same proceedings. But that was a case where the respondent applied to the Assistant Commissioner, Bhagalkot for restoration of watan lands, on the premise that the appellants had taken possession of those lands. The Assistant Commissioner accepted the plea of the respondent and directed the restoration of possession. The appeal filed against that order before the Deputy Commissioner ended in dismissal. The appellant went in revision before the Tribunal, which reversed the concurrent findings of the Assistant as well as Deputy Commissioners and held that the appellants were not strangers to the watan. In reaching the conclusion, the Tribunal was of the view that watan lands had been acquired by Basangouda-1 in the writ petition filed by the respondent. Mysore High Court set aside the order passed by the Tribunal on the ground that it was not open to the Tribunal to reopen and set aside the finding of fact reached by both the authorities concurrently. The matter was remitted to the Tribunal for fresh disposal. The Tribunal after rehearing upheld the findings of both the lower authorities that the watan lands had been acquired by Basangouda-2 and not by Basangouda-1. In fact, Basangouda-1 was the grandfather of Basangouda-2. Unless it was shown that the lands had been acquired by Basangouda-1, the appellants would have to be held as strangers qua the lands. The appellants filed writ petition assailing the order of the Tribunal. The High Court dismissed the writ petition. In the appeal the apex Court was of the view that when the High Court while remitting the matter to the Tribunal for fresh disposal recorded the finding and gave directions to the Tribunal not to reopen the questions of fact in revision, the Tribunal after such remand, complied with the direction of the High Court and hence that finding which had become final would operate as *res judicata*. In that context, the apex Court was of the view that the principles of *res judicata* can be invoked in a subsequent stage of the same proceeding. The above

decisions sought to be relied upon by the learned counsel for the respondent are obviously peculiar to the facts of those cases unlike the facts in the instant case.

In *Smt. Isabella Johnson v. M.A.Susai*[8] the apex Court was of the view that a Court, which has no jurisdiction in law could not be conferred with the jurisdiction by applying principles of *res judicata*, and there could be no estoppel on a pure question of law and the question of jurisdiction is a pure question of law. In that case, the appellant filed a civil suit in O.S.789/1973 before the III Assistant Judge, City Civil Court, Hyderabad for recovery of possession of the suit premises. The case of the appellant was that the respondent was in occupation of the premises on the condition of paying Rs.30/- per month and he was irregular in payment of rents. The respondent took a preliminary objection that the Civil Court had no jurisdiction to entertain the suit as the suit fell within the jurisdiction of the Rent Controller. In fact two petitions had earlier been filed by the appellant before the Rent Controller for eviction and both of them had been rejected, on the ground that the purported tenancy was hit by Section 3 of the A.P. Rent Control Act, and therefore the application could not be entertained by him. In a civil suit also the respondent took up the same plea that the suit fell exclusively within the jurisdiction of the Rent Controller. The learned Assistant Judge having regard to the inconsistent pleas taken by the respondent before the Rent Controller that the Rent Controller had no jurisdiction and before the civil Court that it had no jurisdiction, he could not be permitted to approbate and reprobate and rejected the plea of the respondent. The decision of the Assistant Judge was upheld in the appeal before the Chief Judge, City Civil Court. In the second appeal, the High Court took the view that in the matters of jurisdiction, the question of estoppel did not arise. Eventually, the High Court was of the view that the civil Court had no jurisdiction to entertain the suit. Before the Apex Court, it was contended that inasmuch as the issue of jurisdiction was finally

decided in between the parties, the respondent should not be permitted to take inconsistent pleas, placing reliance upon the judgment of the Apex Court in *Avtar Singh v. Jagjit Singh*[9]. The contention of the counsel was repelled by the Apex Court and while doing so, it sought to rely upon its earlier judgment in *Mathura Prasad Bajoo Jaiswal v. Dossibai N.B.Jeejeebhoy*[10] referred to above. That judgment was followed by the apex Court in *Sushil Kumar Mehta v. Govinda Ram Bohra*[11]. Madhura Prasad's case (5 supra) has been rendered by a three judge bench. The apex Court followed the said judgment in preference to Avatar Singh's case (9 supra), which was rendered by a two judge bench. It was held that the plea of estoppel, the plea of *res judicata* could not be invoked, so as to confer jurisdiction upon a Court, which had no jurisdiction.

A full bench of this Court in *3 ACES, Hyderabad v. Municipal Corporation of Hyderabad*[12] reiterated the same view following the judgments of the apex Court in Mathura Prasad's case (5 supra), Susheel Kumar Mehta's case (10 supra) and Isabella Johnson's case (8 supra).

It is obvious that the rule of procedure incorporated in Section 11 of the Civil Procedure Code cannot supercede or over ride the law. From the above discussion, the two principles that clearly emerge are that an order of remand passed by the appellate Court is an interlocutory order and that the decision on the inherent jurisdiction of the Court is a pure question of law and will not operate as *res judicata*.

Coming to the matrix in the instant case, the question, whether the Special Tribunal under the A.P. Land Grabbing (Prohibition) Act has jurisdiction, or not, is a pure question of law, besides being a jurisdictional question. True, to decide that question, the matrix of the given case may have to be considered. Here, in the instant case, whether the property in dispute is a land or a building that determines

the jurisdictional question. Obviously, whether the property in dispute falls within the ambit of the definition of 'land' or 'building' is a pure question of fact. The jurisdictional question is dependent upon the decision on that question of fact. Nonetheless, when a decision is reached on the question of fact as to whether the property in dispute is 'land' or 'building', the further question as to whether the Special Tribunal has jurisdiction or not, since mainly dependent upon the interpretation of the provision 2(c) and other provisions in the Act germane for consideration as well cannot be considered as a mixed question of law and fact nor an issue in between the parties *inter se* regarding the rights. Hereinabove we have already reached the conclusion that the property in dispute is a house with its appurtenant vacant site having regard to the matrix of the case.

It is trite that the plea that has been taken *inter alia* in the plaint or application, as the case may be, that gives the forum but not the plea that is taken as a defence *inter alia* in the written statement or counter. Therefore, always and in all circumstances the question as regards the jurisdiction over the subject matter, which is otherwise known as inherent jurisdiction of the Court or Tribunal, as the case may be, shall have to be decided only by looking at the averments made in the plaint or the application inasmuch as the plaint gives the forum. Well, when once that is obvious, the other question, as to whether in those circumstances the Special Tribunal under the Act has jurisdiction or not, becomes a pure question of law, besides being a jurisdictional question. That cannot be an issue for determination in between the parties. From the averments made in the application and in the concise statement appended thereto, as discussed hereinabove that it appears to be an unequivocal case of the applicant that the property in dispute is a house with its appurtenant site. A distinction can be clearly drawn in between a case where occupying the open land and constructing a building and occupying a building along with the open land, which was constructed earlier. While in the former

case, it was a case of grabbing the land for the purpose of constructing unauthorisedly a building and in the latter case, it was the occupation of a building along with its appurtenant land. When once we reach this conclusion having regard to the matrix of the instant case that the property in dispute is a building with its appurtenant land, but not a land along with a building in existence, it has to be seen whether the finding of this Court in W.P.No.35561/1998 would operates as *res judicata* or not. The conclusion as to whether the property in dispute is a building with its appurtenant land or land along with building mainly depends upon the fact situation. Once finality is reached, certainly it cannot be reopened. But here is a case where a different connotation was sought to be given to the provision enjoined under Section 2(c) of the Act as having included within its ambit, the building too. Whether Section 2(c) has been properly interpreted by this court or not is the question. Section 2(c) of the Act is germane in the context and it reads as under:

> "Land includes rights in or over land, benefits to arise out of land and buildings, structures and other things attached to the earth or permanently fastened to anything attached to the earth".

Having regard to the said definition in particular and in general, the definition of the expression 'land' as interpreted by many a judgment of the apex Court, this Court was of the view that the land includes superstructure etc. unless they are excluded from the definition of the land.

In the instant case when an application was filed for possession of building along with its appurtenant land, it was held by the Special Court that the special Tribunal had no jurisdiction to entertain such an application.

It is the next contention of the learned senior counsel for the petitioner that the expression "includes" has an extensive meaning but it shall have to be read in the context. It is his further contention that no necessary foundation has been laid in the application *inter alia* giving jurisdiction to the Special Court. Therefore, the case of the respondent

cannot be accepted. To buttress his first contention, the learned counsel seeks to place reliance upon the Judgment of the Apex Court in *South Gujarat Roofing Tiles Manufacturers Association v. The State of Gujarat*[13] wherein it was held that although the expression "includes" is generally used as a word of extension, but depending on the context, it may have been used in a restrictive sense also. That was a case where Entry 22 of Part-I of the Schedule to the Minimum Wages Act, 1948 came up for interpretation and that entry included the manufacturing industry. Nine articles of pottery were specified in the explanation appended thereto. If extensive meaning were to be given to the expression "includes" it may bring within its sweep and ambit some other articles, which are not listed in the explanation. In that view of the matter, the Apex Court held that the expression "includes" shall have to be given a restrictive meaning having regard to the context. In *S.K.Gupta v. K.P.Jain*[14] the Apex Court held that contextual construction should be given while in the interpretation process of the provisions of a statute, in that view as discussed hereinabove this contention seems to be quite not germane.

Apropos the second contention, the learned counsel seeks to place reliance upon the decision in *D.V.V.Gopala Satyanarayana v. Sakala Veera Raghavaiah*[15]. The Apex Court in that case was of the view that having regard to the provision Section 10(3)(a)(iii) of the A.P. Buildings (Lease, Rent and Eviction) Control Act by seeking eviction the facts mentioned in sub-clause (iii) are to be pleaded in the petition and thereafter proved at the trial. So it becomes necessary for the applicant to make specific averments in the application, which attract the jurisdiction of the Special Tribunal cannot be gainsaid. The plea as mentioned in the application should be considered plainly so as to see whether it gives the necessary jurisdiction or not.

Since the decision of this Court while remitting the matter to the Special Court for fresh disposal was mainly depended upon the

interpretation of a provision of the Act, which is the pure question of law involving the interpretation process, such a decision will not operate as *res judicata*. The rule of procedure incorporated in Section 11 of Code of Civil Procedure cannot supercede or over ride the legal position.

By the very nomenclature it is manifest that the Act applies to the lands but not to the buildings, when it is alleged that the land is grabbed, the land along with the existing superstructures or building thereon can together reflect as property in dispute. For instance if an application is filed seeking possession of building along with its appurtenant land because the building in question is in existence on the land and is surrounded by the vacant land, it cannot be said that it is a case of grabbing of a land, but it is certainly a case of occupation of a building. In the former case, the Special Tribunal or the Special Court, as the case may be, under the Act has jurisdiction to adjudicate but in the latter case obviously it lacks very much the necessary jurisdiction.

It is the other contention of the learned senior counsel for the applicant that the Judgment rendered by the Court or Tribunal, which suffers from inherent lack of jurisdiction is null and void and such a Judgment cannot operate as *res judicata*. In this context, the learned counsel seeks to place reliance upon the following Judgments of the Apex Court: *Kiran Sing v. Chaman Paswan*[16]; *State of Orissa v. Brudaban Sharma*[17]; *A.R. Antulay v. R.S.Naik*[18], *M.L. Sethi v. R.P.Kapur,*[19] and *Chief Justice of A.P. v. L.V.A. Dikshitulu*[20], the legal position sought to be canvassed cannot be doubted. Such a Judgment having been rendered by a court lacking necessary jurisdiction cannot operate, as *res judicata* cannot also be doubted. Even otherwise, the findings on question of jurisdiction cannot operate as *res judicata* is the conclusion reached by us hereinabove while discussing various Judgments of the Apex Court and a full bench

judgment of this Court.

It is clearly averred *inter alia* in the petition that the property in dispute is a building with its appurtenant land. The matter will not come squarely within the jurisdiction of the Special Tribunal. Although on the factual aspect the applicant seems to have a good case, but it is an unfortunate situation where the applicant approached a wrong forum, which has no jurisdiction to adjudicate. Therefore, the application must fail. We may hasten to add that the applicant is not remediless. She can approach the appropriate forum for redressal of her grievances.

For the above reasons, the writ petition is allowed and the impugned Judgment of the Special Court and the Judgment of the Special Tribunal are hereby set aside. Having regard to the peculiar circumstances of this case, there shall be no separate order as to costs.

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T.CH.SURYA RAO, J.

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G.CHANDRAIAH, J.

Dated _____

Note: L.R. copy to be marked.
B/o
Skmr / Rns

*THE HON'BLE SRI JUSTICE T.CH.SURYA RAO
AND
THE HON'BLE SRI JUSTICE G.CHANDRAIAH

+ WRIT PETITION NO.304 OF 2001
(Per TCSR,J)

%WEDNESDAY, THE EIGHTEENTH DAY OF APRIL,
TWO THOUSAND AND SEVEN

Mohammad Vajahath Hussain alias Fasi,
S/o Shoukat Hussain, aged 50 years,
Occ: Agriculture, R/o 4-3-65,
Tirpally Locality, Adilabad ... Petitioner

Vs.

$ The Special Court under A.P. Land Grabbing
(Prohibition) Act, rep. by its Registrar,
B.R.K.R. Government Offices Complex,
II Floor, Tank Bund Road,
Hyderabad. And another ... Respondents

!Counsel for the Petitioners : Mr. K.Ramakrishna Reddy
Senior Counsel,
Mr.H.Venugopal

^Counsel for the Respondents : Mr.V.Ravinder Rao

G.P. for Revenue

<Gist:

>Head Note :

?CITATIONS:

(1) AIR 1960 SC 744
(2) AIR 1960 SC 941
(3) AIR 1971 SC 2352
(4) AIR 1977 SC 392

(5) AIR 1971 SC 2355
(6) AIR 1928 Cal 777 (FB)
(7) AIR 1977 SC 392
(8) AIR 1991 SC 993
(9) AIR 1979 SC 1911
(10) AIR 1971 SC 2355
(11) (1990) 1 SCC 193
(12) AIR 19945 AP 17
(13) (1976) 4 SCC 601
(14) (1979) 3 SCC 54
(15) AIR 1987 SC 406
(16) AIR 1954 SC 340
(17) 1995 Supp (3) SCC 249
(18) (1988) 2 SCC 602
(19) (1972) 2 SCC 427 = AIR 1972 SC 2379
(20) AIR 1979 SC 193

THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION NO.304 OF 2001

DATED 18—04—2007

Mohammad Vajahath Hussain alias Fasi,
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Occ: Agriculture, R/o 4-3-65,
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v.

The Special Court under A.P. Land Grabbing
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